



**In re Naftally Mwaniki Gitonga (Miscellaneous Civil Application
E038 of 2024) [2025] KEHC 16288 (KLR) (Civ) (12 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 16288 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYANDARUA
CIVIL
MISCELLANEOUS CIVIL APPLICATION E038 OF 2024**

KW KIARIE, J

NOVEMBER 12, 2025

**IN THE MATTER OF THE DECLARATION OF
THE DEATH OF NAFTALY MWANIKI GITONGA.**

IN THE MATTER OF

**ELIZABETH WAMAITHA WANYOIKE 1ST APPLICANT
WILLIAM GITONGA MWANIKI 2ND APPLICANT
JOYCE NJOKI MWANIKI 3RD APPLICANT
DANIEL WANYOIKE MWANIKI 4TH APPLICANT**

RULING

1. Elizabeth Wamaitha Wanyoike, the first applicant, is the wife of one Naftaly Mwaniki Gitonga, while the second, third and fourth applicants are their children. They brought the originating summons dated 24th September, 2024. They are seeking an order of presumption of death of her husband and father, whom they have not heard from since February 2005.
2. The first applicant deponed a supporting affidavit dated 24th September, 2024. In the affidavit, she stated the efforts made to locate her husband. The disappearance was reported at Ndaragwa Police Station and was recorded in the Occurrence Book as No. 18/28/02/2005.
3. Several announcements were made in churches, schools and public barazas. She attached a chief's letter dated August 9th 2024, which supported their contention.



4. I have reviewed the written submissions and all relevant documents attached to the affidavit of the first applicant. The application was made under section 118A of the *Evidence Act*, which states as follows:

Where it is proved that a person has not been heard of or seen for seven years by those who might be expected to have heard of him if he were alive, there shall be a rebuttable presumption that he is dead.

5. In view of the credible evidence that Naftaly Mwaniki Gitonga has not been seen or heard from for the past twenty years, and considering that the law presumes he is dead under such circumstances, I hereby grant the prayer of the applicants as requested in the summons dated 24th September, 2024. Naftaly Mwaniki Gitonga is declared dead in accordance with Section 118A of the *Evidence Act*.

DELIVERED AND SIGNED AT NYANDARUA, THIS 12TH DAY OF NOVEMBER 2025

KIARIE WAWERU KIARIE

JUDGE.

